

DECLARING THAT THE UNITED STATES HOLDS CERTAIN LANDS IN TRUST FOR THE PUEBLO DE COCHITI

APRIL 18, 1984.—Ordered to be printedFiled under authority of the order of the Senate of April 13 (legislative day, March 26), 1984

Mr. ANDREWS, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2403]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2403) to declare that the United States holds certain lands in trust for the Pueblo de Cochiti, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 4, line 5, delete the term "Fe".
2. On page 5, line 18, delete the word "to" and insert in lieu thereof the word "on".

PURPOSE

The purpose of S. 2403 is to transfer title to 25,000 acres of land within Santa Fe National Forest to the Indians of the Cochiti Pueblo in New Mexico and to correct an invalid transfer of the land in 1805 which was later declared void by a Spanish court of proper jurisdiction.

BACKGROUND AND NEED

A. Spanish title

The Pueblo de Cochiti purchased the land that forms the basis of its claim—known as the Santa Cruz Spring Tract—in 1744 during the period of Spanish sovereignty over what is now New Mexico. The land was long believed to have been sold by the pueblo in 1805 to Luis Maria Cabeza de Baca, but recently discovered evidence shows that this sale was declared invalid by the governing Spanish authorities. Thus, the

pueblo's 1744 deed is still valid. The Pueblo de Cochiti is the only Indian tribe of those which have attempted to or succeeded in having land restored through legislative action, to possess a valid deed of purchase to the land it seeks. The pueblo paid the sum of 1500 pesos for the land, which was described in the deed as follows:

. . . Certain lands and site which are known as El Ojo de Santa Cruz (Santa Cruz Spring, together with all thereto annexed and belonging grazing lands, watering places and entrances and exits, uses and rights thereto; which are bounded, on the north as far as the bills of Santa Cruz, on the east by the house of the little spring, on the south by the boundary of the Pueblo of Santo Domingo, and on the west, by lands of the Pueblo de San Buenaventura (Cochiti. . . .

The subsequent history of this tract of land during the Spanish period has remained unclear until 1979, when additional documents were discovered in the archives of the Audencia in Guadalajara, Mexico. The documents were discovered and translated by Prof. William Taylor of the University of Virginia in the course of research regarding pueblo water rights under Spanish law.

These documents clearly indicate that the Pueblo of Cochiti was vested with full title to this land under the laws of Spain. The archival documents refer to two separate land disputes between Indian pueblos and Hispanic settlers. Cochiti Pueblo had apparently called for the nullification of two land sales made by the pueblo in 1805 to Luis Maria Cabeza de Baca. One of these sales concerned the area of Pena Blanca, and the other the Santa Cruz Spring site. The dispute apparently centered upon whether the lands involved in the 1744 purchase were "community lands", which could only be sold with government approval. The Spanish authorities ordered a survey but the surveyor apparently felt that the lands had been freely sold to Baca and so should not be included in the pueblo's lands. The parties attempted to settle the dispute by agreement, but were unsuccessful.

In 1817, the Fiscal Protector for the Indians petitioned the Spanish crown for restoration of the lands. The petition reveals that the consent of the pueblo to the sale to Baca was obtained through force and duress, and without government approval. The petition lists a number of other issues and alleges that the pueblo received less than half of the fair price for the land. The sale was held to be invalid under Spanish law pertaining to dealings with the Indians. However, this order apparently was never enforced.

B. U.S. Court of Private Land Claims

The United States acquired jurisdiction over the territory of New Mexico under the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922). By section six of the treaty, the United States bound itself to recognize and protect all vested property rights. In order to carry out that provision, Congress created the Office of Surveyor General for New Mexico who recommended confirmation of the Cochiti Pueblo grant. The grant was confirmed and patented. The pueblo's ownership of El Ojo de Santa Cruz was apparently not considered at that time.

The method of approval of Spanish and Mexican land grants through legislative enactment proved inadequate. In 1891, the Court

of Private Land Claims was established to adjudicate claims based on Spanish and Mexican land grants. Act of March 3, 1891, 26 Stat. 854. Section 8 of the act provides that confirmation of title by the Court of Private Land Claims shall accept any land already disposed of by the United States, and shall be subject to any conflicting private interests, right or claims. Section 8 further provides:

And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and, no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby.

Section 13 of the act further provides that "no claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place."

These limitations upon the power of the Court of Private Land Claims are significant because the court proceeded to confirm both the La Majada and the Caja del Rio land grants, which overlapped the Cochiti Pueblo grant, El Ojo de Santa Cruz purchase, and each other.

The Caja del Rio grant was presented for confirmation to the Court of Private Land Claims in 1893, by the heirs of the original grantees. The court confirmed the grant, entering a final decree on February 12, 1895. The decree stated that "such confirmation should not interfere with or overthrow any just unextinguished Indian title or right to any lands within the exterior boundaries thereof." La Majada grant was also confirmed by the court, and a final decree was entered on March 25, 1896. Patents were later issued for both grants.

The Court of Private Land Claims did not adjudicate the overlaps between these grants, perhaps because the 1744 deed could not be located at that time. This perhaps also explains why the Federal Government failed to assert its guardianship over Indian lands. Another possible explanation is the date, 1893, three years after Wounded Knee.

In any event, it is clear that the loss of this land represents an injustice to the Pueblo of Cochiti. By the Treaty of Guadalupe Hidalgo of 1848, the United States obligated to respect and protect vested property interests. The United States failed to meet this obligation. If this land can be returned through this legislation, the United States will have fulfilled its obligation to the Pueblo of Cochiti.

C. Federal purchase

In 1934 and 1935, the Santa Cruz Spring Tract, together with other New Mexico land, was acquired by the Federal Government for the use of the Cochiti and other pueblos under the so-called "submarginal" lands purchasing program. However, the lands were subsequently diverted to non-Indian use and came under Agriculture Department control. In 1972, the tract was added to the Santa Fe National Forest.

D. Summary

(1) The Indians purchased the tract from its Spanish owner in 1744 during the period of Spanish sovereignty over New Mexico. This is the only known instance where a claim for land restoration is based upon original paper title. A copy of this deed is still in existence.

(2) A Spanish colonial court ruled that a purported conveyance of the land by the pueblo to a third party was fraudulently made and violated applicable provisions of Spanish law. While there are many instances in our country's history where land was improperly obtained from Indians, there is usually no existing evidence that can prove that fact. Here, the recent discovery of the long-lost decree of the Spanish court conclusively establishes the invalidity of the transaction, and reveals that the court ordered the land returned to the Cochtiti Indians. It is unlikely that any other tribe seeking land restoration could supply any evidence comparable to this decree.

(3) The pueblo has urged its claim for many years, but has so far been unsuccessful because it was, until recently, unable to provide documentary proof that the conveyance had been voided by the Spanish court conclusively establishes the invalidity of the transaction, and reveals that the court ordered the land returned to the inability to prove its annulment.

(4) In 1934 and 1935, the Santa Cruz Spring Tract, together with other New Mexico land, was acquired by the Federal Government for the use of the Cochiti and other pueblos under the so-called "submarginal" lands purchasing program administered by the Department of the Interior. However, the lands were diverted to non-Indian use and came under Agriculture Department control. Eventually, the tract was included in the National Forest.

(5) The Indians have offered to purchase a relinquishment of the grazing rights of non-Indians presently using the area under Forest Service permit at the appraised price determined by the Bureau of Indian Affairs; the Cochiti Pueblo has set aside approximately \$440,000 in escrow for these purchases.

E. Environmental impact and precedential value

Concern has been expressed that enactment of this legislation may establish a precedent for future legislation affecting Federal lands. Congress, from time to time, has seen fit to transfer Federal lands into trust status for the benefit of certain Indian tribes. While the cases where this has been done in the past set a precedent for the relief sought by the Cochiti, each case has been handled, essentially, on an ad hoc basis. Granting the relief requested to Cochiti would in no way expand the presently existing legislative precedents.

Testimony was received by the committee suggesting that Indian tribes presently have claims to 90 percent of the 9 million acres of forest service lands in the State of New Mexico. It appears that this estimate was based on examination of a map located in the Regional Forest Service Office in Albuquerque, N. Mex. It is not clear when this map was prepared or what it purports to depict. However, representatives of the Department of the Interior testified that the only claim of which that Department had specific knowledge involved approximately 9,000 acres of forest service lands.

Concern was also expressed regarding certain wildlife values in the area affected by this legislation, specifically the White Rock Canyon of the Rio Grande which has been surveyed and found suitable for Rocky Mountain bighorn sheep re-introduction and protection of a new wetland area forming along the Rio de Santa Fe due to the filling of Cochiti Lake. Correspondence received by the committee subsequent

to the hearing but made a part of the hearing record indicates that the White Rock Canyon is not situated on the 25,000-acre tract that is the subject of this legislation. The wetland area is presently administered by the Corps of Engineers as a part of the Cochiti Lake project. Section 7 of this bill specifically provides that until such time as the Cochiti Lake project is deauthorized by the Congress, full recognition shall be given to all interests in land acquired by the Department of the Army through fee acquisition and under Memorandums of Agreement with the Departments of Agriculture, Interior, and Energy, the University of New Mexico, and the Pueblo de Cochiti, for the operation and maintenance of Cochiti Lake on a portion of the lands herein declared in trust.

The 25,000-acre tract of land that is the subject of this legislation is currently the subject of grazing leases under the Taylor Grazing Act. Section 5 of this bill provides that the lands that are being taken into trust shall not be developed for any use other than a use in existence on the date of enactment of this act. The Governor of the Cochiti Pueblo testified that the pueblo has no plans for the use of this land other than for cattle grazing.

LEGISLATIVE HISTORY

S. 2403 was introduced by Senator Domenici, for himself, and Senator Bingaman on March 8, 1984. A companion bill, H.R. 3259, was introduced in the House of Representatives by Congressman Richardson. Hearings were held before the House Committee on Interior and Insular Affairs on July 26, 1983. H.R. 3259 was passed by the House of Representatives on November 7, 1983, and was referred to the Select Committee on Indian Affairs for consideration. The Select Committee on Indian Affairs held hearings on S. 2403 on March 29, 1984. S. 2403 was ordered reported out with amendments by the Select Committee on Indian Affairs at a markup session on April 9, 1984.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, at its business session on April 9, 1984, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2403, as amended.

AMENDMENTS

The Select Committee on Indian Affairs, at its business session on April 9, 1984, ordered S. 2403 be reported with two technical amendments. These amendments are set forth at the beginning of this report.

SECTION-BY-SECTION ANALYSIS

S. 2403 is identical to H.R. 3259, except with respect to the addition of a phrase in section 8 limiting the rate that may be charged for a utility right-of-way easement under that section to the current Federal rate for such easements, and the addition of a new section 9 providing that any water rights appurtenant to the lands transferred to

the pueblo under the act shall be those rights existing under State law on the date of enactment of this act. The following is a section-by-section analysis of S. 2403:

Section 1 provides that the interest of the United States in the affected lands are declared to be held in trust for the Pueblo de Cochiti.

Section 2 describes the affected lands, comprising approximately 25,000 acres within the Santa Fe National Forest.

Section 3 protects all existing legal rights of private entities or persons within the lands being transferred.

Section 4 requires the Secretary of the Interior to conduct a survey of the lands and publish such survey within 1 year of enactment of this act.

Section 5 provides that the lands transferred to the pueblo shall be a part of the pueblo's reservation and shall be governed under applicable Federal laws. It further restricts any future use of the lands to those uses in existence on the date of enactment of the act.

Section 6 provides an option to current permittees of lands within the transferred area to renew their permits for a period of 30 years or for life, whichever occurs later in time. Such permit rights are subject to extinguishment by purchase of the Cochiti Pueblo.

Section 7 contains special provisions to protect rights of the Department of the Army in lands acquired pursuant to law for operation and maintenance of the Cochiti Lake project.

Section 8 authorizes the Secretary of the Interior to grant necessary easements for access to recreational sites, access to private parcels of land, access necessary for permittees to exercise permit rights, and limits the charges that may be imposed for valid utility rights-of-way or easements.

Section 9 provides that water rights appurtenant to the lands transferred shall be those water rights existing under State law on the date of enactment of the act.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 2403, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 12, 1984.

Hon. MARK ANDREWS,
*Chairman, Select Committee on Indian Affairs,
U.S. Senate, Hart Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2403, a bill to declare that the United States hold certain lands in trust for the Pueblo de Cochiti, as amended and ordered reported by the Senate Select Committee on Indian Affairs, April 9, 1984.

Based on this review, the Congressional Budget Office has determined that enactment of this bill would not result in any significant costs to either the federal government or state and local governments

in the area other than an estimated \$5,000 in annual grazing fees (which the federal government would no longer receive if the bill is enacted). The bill would transfer title to approximately 25,000 acres of federal land to the Pueblo de Cochiti, in the Santa Fe National Forest. According to the Department of the Interior, estimates of the value of the land range from \$3.5 to \$4.0 million.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director*.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The committee believes that S. 2403 will have no impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The committee has not received a formal legislative report on S. 2403. In hearings before this committee, the Department of the Interior supported enactment of the bill without amendment.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the committee states that enactment of this legislation will not change any existing law.



